

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MIC:DET:TL-N-4360-99
RDHeitmeyer

date: **AUG 10 1999**
to: Chief, Quality Measurement Branch, Michigan District
from: District Counsel, Michigan District, Detroit

subject: [REDACTED]

EIN: [REDACTED]

In response to your request by memorandum dated July 8, 1999, we have reviewed the Form 872, Consent to Extend the Time to Assess Tax (the extension) signed by [REDACTED] of [REDACTED] on [REDACTED], on behalf of [REDACTED], and Raymond Wolff, Acting Director of Appeals on behalf of the Secretary on [REDACTED]. We have concluded that [REDACTED] is the proper entity to execute the extension. Accordingly, the statute of limitations for assessment has been properly extended by agreement from [REDACTED], to [REDACTED]. The advice contained in this memorandum is subject to 10-day post-review in the National Office (Jerry Flemming), which we will expedite.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

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ISSUE

Whether [REDACTED] continues to be the proper party to extend the statute of limitations for its taxable year ended [REDACTED], where it was acquired on [REDACTED] by another entity.

CONCLUSION

[REDACTED], is the proper party to extend the statute of limitations for its taxable year ended [REDACTED].

FACTS

[REDACTED] of [REDACTED] Michigan was acquired for approximately [REDACTED] dollars by [REDACTED] of [REDACTED] on or about [REDACTED]. [REDACTED] is incorporated under the laws of the state of Michigan. [REDACTED] filed a consolidated corporate tax return for the taxable year ended [REDACTED], which is the year at issue.

On [REDACTED], [REDACTED] Vice-President and Treasurer of [REDACTED] executed a Form 2848, Power of Attorney and Declaration of Representative appointing Certified Public Accountant [REDACTED] of [REDACTED] as attorney-in-fact authorized to represent the taxpayer before the Internal Revenue Service (the Service) on tax matters related to the Form 1120 for the [REDACTED] taxable year.

In [REDACTED], (after [REDACTED]'s acquisition of [REDACTED]) representatives of [REDACTED] and the Service executed the extension which is the subject of this advisory opinion.

After the [REDACTED] acquisition of [REDACTED] by [REDACTED], [REDACTED] continues to operate as a legal entity. However, rather than operating as a common parent corporation, [REDACTED] now operates as a subsidiary of a newly formed corporation named [REDACTED]. As noted by the partial organizational chart attached hereto as exhibit A, [REDACTED] has been renamed [REDACTED], which has a number of wholly owned subsidiaries. The principal place of business for [REDACTED] continues to be [REDACTED], Michigan. A review of current transcripts of account reveals that tax information and payments continue to be processed under [REDACTED]'s employer identification number which is [REDACTED]. As noted by the partial organizational chart, The employer identification number for [REDACTED] is also [REDACTED].

ANALYSIS

Section 6501(a) of the Internal Revenue Code provides that the Service has three years after a return is filed to assess additional tax. Section 6501(c)(4) provides that where, before expiration of such time, both the Secretary and the taxpayer consent in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agree upon.

The common parent "shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating the tax liability for the consolidated return year." Treas Reg. § 1.1502-77(a). The common parent remains the agent for the members of the group for any years which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401 (1985); Craigie, Inc. v. Commissioner, 84 T.C. 466, 472 (1985). Thus, as a general rule, the common parent remains the proper party to extend the limitations period and receive notices of deficiency for any taxable year during which it was the common parent, as long as it remains in existence under state law.

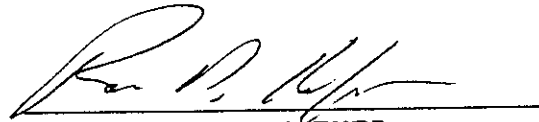
██████████, continues to exist and operate under state law as represented by its active employee identification number and the organizational chart attached hereto as Exhibit A. Accordingly, it is the proper party to execute the extension. If ██████ was deemed to be dissolved under state law, it would likewise continue to be a proper party for at least three years after dissolution. Under Michigan law, the existence of a corporation continues for three years after dissolution for the purpose of settling its affairs, and for a longer period for the purpose of concluding any proceeding begun within the three year period. Field v. Commissioner, 32 T.C. 187 (1959).

Our office concurs with the analysis of the revenue agent with regard to the bad debt and the mark to market issues as provided by the Forms 886, Explanation of Items, which were provided to our office. Our office does not recommend any changes to the Forms 886 as drafted.

Questions or comments may be directed to the undersigned at
(313) 226-2052.

PHOEBE L. NEARING
District Counsel

By:

A handwritten signature in black ink, appearing to read "R. D. Heitmeyer", is written over a horizontal line.

ROBERT D. HEITMEYER
Attorney

Attachments
As stated